



October 21, 2020

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Submitted via FOIAOnline

RE: Confined Animal Feeding Operation (CAFO) and NPDES Permit Records

Dear EPA FOIA Officer:

The Greenfield Project ("Greenfield") hereby files this written request for public records pursuant to the Federal Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq., and in accordance with the requirements of 40 C.F.R § 2.102. If this office is not the appropriate place for this request, please forward the request to the correct office or individual, or inform us of the appropriate office or individual to whom to address this request.

Greenfield requests that you provide the following records:

1. All National Pollutant Discharge Elimination System (NPDES) permits currently in effect for "concentrated animal feeding operations" (CAFOs) as defined by 40 C.F.R. § 122.23(b)(2), in California, Iowa, Missouri, Nebraska, Oklahoma, and Texas;
2. All requests for information made to CAFOs pursuant to EPA's Clean Water Act (CWA) Section 308 authority, 33 U.S.C. § 1318, and all records received by EPA in response, from January 2019 to present;
3. All records related to EPA inspections of CAFOs in connection with water quality issues in California, Iowa, Missouri, Nebraska, Oklahoma, and Texas, from January 2019 to present;
4. All EPA warning letters, administrative orders, consent decrees, and other records related to EPA investigations of, and enforcement actions in response to, potential, alleged, or suspected violations of CWA by CAFOs in California, Iowa, Missouri, Nebraska, Oklahoma, and Texas, from January 2019 to present;
5. Records identifying any CAFOs which EPA has determined are exempt from NPDES permitting requirements; and
6. All records regarding CAFO water violations that would be investigated or enforced but for EPA's temporary non-enforcement policy due to the COVID-19 pandemic.

DEFINITIONS

“Records” includes—but is not limited to—emails, reports, studies, written memoranda, correspondence, meeting notes and minutes, telephone recordings, drafts and working papers, notes and summaries of conversations and interviews, presentations, graphic material, photographs, video, and any other form of written, electronic, or recorded information.

If you believe that certain portions of the requested records are subject to an exemption under FOIA, please produce all non-exempt portions of those documents, redact any portions you deem subject to an exemption, and provide a statement regarding the claimed exemption. See 5 U.S.C. § 552(b).

CLAIMS OF EXEMPTION FROM DISCLOSURE

In the event that EPA believes any requested record is wholly or partially exempt from disclosure under FOIA, Greenfield requests that the agency nevertheless exercise its discretion to disclose the records, given the spirit of the law. If EPA determines that any information is not disclosable, we ask that the agency is careful to provide any reasonably segregable, non-exempt information contained, as well as reasoned explanations and justifications for all withheld information, which includes the specific exemption(s) relied upon, as well as basic information about the withheld record, such as the author, origin, date, and subject.

FEE WAIVER

Greenfield is a 501(c)(3) tax-exempt nonprofit organization dedicated to building a more resilient food system and promoting sustainable agricultural practices. Greenfield does not have a commercial, trade, or profit interest in the information requested, and thus is not requesting “trade secrets and commercial or financial information obtained from a person and privileged or confidential,” or any other information exempted pursuant to 5 U.S.C. § 552(b).

A waiver of fees is warranted here because the records covered by this request are not publicly available and disclosure of the requested records “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); see also *Schoenman v. F.B.I.*, 604 F. Supp. 2d 174, 192 (D.D.C. 2009) (“fee waiver provision is to be liberally construed in favor of waivers for non-commercial requesters.”). In particular, these records would contribute significantly to the public understanding of the extent to which exempt CAFO facilities are subject to, and in compliance with, federal water protection requirements.

Greenfield’s work includes detailed analysis of government activities relating to the agricultural sector, and Greenfield is particularly well suited to distribute information regarding this topic to concerned citizens and others on a national scale through its website, public events, reports, and e-newsletter. As such, Greenfield respectfully submits that our request is subject to a mandatory public interest fee waiver under both 5 U.S.C. § 552(a)(4)(A)(iii).

In the event that the waiver is denied, if the request will involve more than two search hours or more than 100 pages of documents and the fees will exceed twenty-five dollars (\$25.00), please notify us immediately before the request is processed, so we may decide whether to pay the additional fees or to appeal the denial of the request for waiver.

FORMAT & DELIVERY

Lastly, we request that the requested documents be produced in electronic, OCR-enabled ("readable") format. Please direct the records and any related correspondence by email to lisa@thegreenfieldproject.org. In the event that the requested records cannot be transmitted by email, any CD-Roms or physical documents may be sent to:

The Greenfield Project
7381 La Tijera Blvd, #45332
Los Angeles, CA 90045

Thank you very much for your time and attention.

Sincerely,

A handwritten signature in black ink, reading "Lisa Winebarger". The signature is fluid and cursive, with the first name "Lisa" and last name "Winebarger" clearly distinguishable.

Lisa Winebarger
Program Director, Policy
The Greenfield Project
(424) 501-6060